



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2257 OF 2025**

Bhagwan Ganpati Jadhav	...	Petitioner
versus		
Babaso Ramchandra Jadhav and Ors.	...	Respondents

Mr. Nikhil N. Pawawr, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 20 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 10 December 2024 passed by the learned District Judge condoning the delay of 455 days in preferring an appeal against the judgment and decree passed in Regular Civil Suit No.108 of 2019 dated 16 November 2022.
3. The Respondents – Defendants had approached the appeal Court with a case that they were unaware of the passing of the decree in RCS No.108 of 2019. Learned Advocate to whom they had entrusted the matter did not apprise them of the progress of the proceedings in the said suit. The Respondents – Defendants were old and infirm, and, therefore, the appeal could not be filed within the stipulated period.
4. By the impugned order, the learned District Judge was persuaded to allow the application observing that a prayer for condonation of delay

deserves liberal consideration and refusal to condone delay would cause grave prejudice to the Defendants. In the view of the learned District Judge, the Respondents-Defendants had ascribed sufficient cause.

5. Learned Counsel for the Petitioner submitted that the Respondents-Defendants had appeared in final decree proceeding No.2 of 2023 and resisted the prayer for the appointment of the Court Commissioner to suggest partition of the properties. The learned District Judge has condoned the delay without evaluating as to whether the Defendants had made out a sufficient cause. By recording general reasons, the application for condonation of delay came to be allowed.

6. I have perused the application preferred by the Respondents-Defendants for condonation of delay. In paragraph Nos.5 and 6 of the application, the Respondents-Defendants have contended, inter alia, that the Respondents, being the agriculturalist, were not well versed in the legal matters and had entrusted the brief to the Advocate. However, the Advocate to whom they had entrusted the brief did not give correct information to them. The personal attributes of illiteracy, old age and illness were also pressed into service to seek condonation of delay.

7. Indeed, there is a delay of 450 days in filing the appeal. However, it appears that no sooner the Respondents-Defendants became aware of the final decree proceedings and participated in the said proceedings, the

application to condone the delay in filing the appeal came to be filed. Some amount of delay or indolence is bound to appear in all the cases in which a party seeks condonation of delay.

8. In the case at hand, the learned District Judge has exercised positive discretion to condone the delay. It is trite, there is subtle yet significant distinction in the matter of interfering with the order of condonation of delay and the order where the trial Court has refused to condone the delay. Ordinarily, if the Court of first instance has exercised the positive discretion to condone the delay, the superior Court is not expected to lightly interfere with the said order unless it borders on perversity or arbitrariness and the discretion has been exercised without there being any material on record.

9. A useful reference in this context can be made to the judgment of the Supreme Court in the case of N. Balakrishnan V/s. M. Krishnamurthy¹ wherein the law was enunciated as under :

“9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court

1 (1998) 7 SCC 123

should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result

foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain V/s. Kuntal Kumari*² and *State of W.B. V/s. Administrator, Howrah Municipality*³.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

10. On the aforesaid touchstone, reverting to the facts of the case, this Court finds that the learned District Judge has approached the matter from a correct perspective and took a liberal view of the matter. It cannot be said that the learned District Judge has exercised discretion without there being any material on record. I am, therefore, not inclined to interfere with the exercise

² AIR 1969 SC 575

³ (1972) 1 SC 366

of discretion to condone the delay.

11. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)